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# *County of San Diego*

## **CITIZENS' LAW ENFORCEMENT REVIEW BOARD**

555 W BEECH STREET, SUITE 505, SAN DIEGO, CA 92101-2940

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### **REGULAR MEETING AGENDA**

### **TUESDAY, DECEMBER 9, 2014, 5:30 P.M.**

### **San Diego County Administration Center**

### **1600 Pacific Highway, Room 302/303, San Diego, 92101**

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the 3-hour public parking spaces.)

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives or any member of the public wishing to address the Board on any of today's agenda items should submit a "Request to Speak" form to the Administrative Secretary prior to the commencement of the meeting.

#### **DISABLED ACCESS TO MEETING**

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to Ana Becker at (619) 238-6776 at least 24 hours before the meeting.

#### **WRITINGS DISTRIBUTED TO THE BOARD**

Pursuant to Government Code 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 505, San Diego, CA.

#### **1. ROLL CALL**

#### **2. MINUTES APPROVAL**

- a) Minutes of the October 2014 Regular Meeting (*Attachment A*)

#### **3. PRESENTATION / TRAINING**

- a) N/A

#### **4. EXECUTIVE OFFICER'S REPORT**

- a) Workload Report - Open Complaints/Investigations Report (*Attachment B*)
- b) Outreach

## 5. NEW BUSINESS

- a) Swearing in of new Board Member, Darrel Harrison
- b) COMMUNICATIONS:
  - 1. Email from "People Who Care About Others."
  - 2. Letter from Inmate Maraglino

## 6. UNFINISHED BUSINESS

- a) Policy Recommendations
- b) Annual Reports

## 7. BOARD MEMBER COMMENTS

## 8. PUBLIC COMMENTS

- a) This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction. Each speaker should complete and submit a "Request to Speak" form to the Administrative Secretary. Each speaker will be limited to three minutes.

## 9. SHERIFF / PROBATION LIAISON QUERY

## 10. CLOSED SESSION

- a) **Request for Reconsideration** – Pursuant to CLERB Rules & Regulations: 16.9 Reconsideration of Final Report. Upon request by the complainant, subject officer or their representatives, the Final Report may be re-opened for reconsideration by the Review Board provided that: (a) previously unknown relevant evidence is discovered which was not available to the Review Board before it issued its Final Report, and; (b) there is a reasonable likelihood the new evidence will alter the findings and recommendations contained in the Final Report.
  - 14-035 / Halpern for Taylor
- b) **Discussion & Consideration of Complaints & Reports / Officer Discipline Recommendation:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).
  - 12-110 / Victorianne (Sustained – SDSO, Deputies 1, 2, 3, and 4)

DEFINITION OF FINDINGS	
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Action Justified	The evidence shows the alleged act or conduct did occur but was lawful, justified and proper.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

## **CASES FOR SUMMARY HEARING (17)**

### **ALLEGATIONS, RECOMMENDED FINDINGS & RATIONALE**

#### **13-045**

1. Excessive Force – Deputy 1 shot the aggrieved as he tried to run away.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights, require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year; therefore the Review Board lacks jurisdiction.

2. Misconduct/Truthfulness – Deputy 1 was not truthful in her statements that the aggrieved fired a Taser at her and she feared for her life.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

#### **13-088**

1. Misconduct/Procedure – Deputy 1 attempted to dissuade the complainant from filing a citizen complaint.

Recommended Finding: Summary Dismissal

Rationale: Court decisions applicable to the Review Board and Government Code §3304(d) of the Public Safety Officers' Procedural Bill of Rights, require that an investigation of a misconduct allegation that could result in discipline be completed within one year of discovery of the allegation, unless statutory exceptions apply. A review of the complaint showed no exceptions applied. Staff did not complete investigation of the complaint within one year; therefore the Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 2 pushed the complainant's wheelchair into a concrete wall causing injury.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Misconduct/Discourtesy – Deputy 2 told the complainant to, "Shut the fuck up," or words to that effect.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Discrimination/Religious – Deputy 2 told the complainant he, "was a piece of shit for being a Mormon," or words to that effect.

Recommended Finding: Summary Dismissal

**13-105**

1. Illegal Search and Seizure – Probation Officers 1-8 detained the complainants and family members during a probation compliance check.

Recommended Finding: Action Justified

Rationale: The complainants reported that Probation Officers entered their residence and detained all individuals in the home during a probation compliance check. Complainant (C1) stated the door knob was broken and she needed a tool to open the door, which caused about a two minute delay in opening the door. Probation Officers reported that they heard from inside, “It’s the cops,” and observed individuals inside running to the rear of the residence. The Probation Officers complied with knock and notice procedures, their entry was delayed by the occupants, and met with resistance upon entry. The complainants and family members were held in the living room while a protective sweep and search of areas under the probationer’s control was conducted, as authorized by case law and Department Policies and Procedures. The evidence showed that the conduct did occur, but was lawful, justified and proper.

2. Excessive Force – Probation Officer 6 and/or 8 grabbed C1 and pulled her into the living room.

Recommended Finding: Not Sustained

Rationale: C1 said that Probation Officer 9 forcefully grabbed her and pulled her into the living room. The aggrieved also said that he observed Probation Officers grab his mother and move her toward the living room. Probation Officer 4 indicated that C1 was slow to follow his directions to go to the adjacent room, resulting in Probation Officers 6 and 8 moving C1 along into the living room; however, Probation Officers 6 and 8 denied force was used to move the complainant to another room. There was insufficient evidence to prove or disprove the allegation.

3. Excessive Force – Probation Officers 2 and 6 grabbed the aggrieved and threw him to the ground.

Recommended Finding: Action Justified

Rationale: The complainants reported that the aggrieved had been grabbed and thrown to the ground. Probation Officer 6 observed the aggrieved yelling profanities toward officers, in close proximity to the handcuffed probationer. The aggrieved was directed to move into the living room, and, as he backed away spit into the face of Probation Officer 6. The aggrieved stated he had been eating when officers arrived, and admitted that he unintentionally spit into the Probation Officer’s face. Probation Officers 2 and 6 grabbed the aggrieved’s arms, bent him over a table, and applied handcuffs. Probation Officer 2 escorted the aggrieved to the kitchen and directed him to sit on the floor next to the probationer, but the aggrieved failed to comply, at which time Probation Officer 2 delivered a knee strike to the aggrieved’s leg causing him to go down to his knees. He was then pushed the rest of the way down, until seated on the floor. The evidence showed that the conduct did occur, but was lawful, justified and proper.

4. Excessive Force – Probation Officers 2 and/or 3 kicked the legs out from under the aggrieved probationer, threw him to the ground, and handcuffed him.

Recommended Finding: Action Justified

Rationale: The complainants reported that the probationer had his legs kicked out from under him, was thrown to the ground and handcuffed. Probation Officers 2 and 3 reported that the aggrieved probationer was in the kitchen, yelling at officers as they attempted to enter and secure the residence. Probation Officers 2 and 3 grabbed the aggrieved probationer’s arms, placed him on his knees, and applied handcuffs without further incident. The evidence showed that the conduct did occur, but was lawful, justified and proper.

5. Excessive Force – Probation Officers 3 and 8 pushed complainant (C2) to the floor and piled onto her, causing injury.

Recommended Finding: Action Justified

Rationale: C2 arrived at the residence after officers had already entered, and was told to either stand aside or go into the house. She stated she chose to remain outside and attempted to talk with the aggrieved probationer, when she was pushed toward the house, fell to the floor, and officers piled on top of her. Probation Officer 3 reported that C2 was told to go inside the house, but she refused, approached other secured individuals, and failed to comply with orders. C2 actively resisted Probation Officers control efforts, resulting in the use of Department-approved hand/arm guidance controls to take her to the ground and handcuff her. Probation Officers monitored C2, as she experienced seizure-like symptoms. Medical personnel were summoned, and C2 was transported for medical evaluation. A review of medical records provided no evidence of injury related to the incident. The evidence showed that the conduct did occur, but was lawful, justified and proper.

6. Excessive Force – Probation Officer 9 pushed a Taser into the neck of complainant C2.

Recommended Finding: Unfounded

Rationale: C2 stated that after Probation Officers had pushed her to the ground, one of the Probation Officers pushed a Taser to her neck, but did not use it. All Probation Officers present denied possessing a taser, because they were not issued Tasers, and they were not authorized to carry them in Field Operations. C2 was prone on the ground and unable to see what, if any, object may have been applied to her neck. Probation Officers 3 and 8 denied placing their hands or any object against C2's neck during the incident. The evidence showed that the alleged act did not occur.

7. Improper Discharge of a Firearm – Probation Officer 3 shot out a window in the complainant's home.

Recommended Finding: Unfounded

Rationale: The complainants stated they heard a gunshot which shattered a window in the home. All Probation Officers present denied discharging a weapon. The complainants had not complied with the officers' request for entry into the residence, resulting in a decision to force entry. Probation Officer 3, positioned outside the complainant's residence, used a small pry tool to shatter a bedroom window as diversion, as other officers forced entry into the residence. There was no firearm discharged, and the evidence showed that the alleged act did not occur.

8. Misconduct/Procedure – Probation Officer 9 attempted to pull down and disconnect home surveillance equipment.

Recommended Finding: Action Justified

Rationale: The complainants reported that Probation Officers were observed pulling down and disconnecting the surveillance cameras inside the home. The complainants later stated that there had been no attempts to destroy or damage the surveillance equipment; however, a Probation Officer was observed disconnecting the camera inside the home. Probation Officers on scene denied pulling down any surveillance cameras. Probation Officer 8 disconnected one cable on the surveillance system inside the residence as a matter of officer safety but made no effort to destroy the equipment. Subsequent to the incident, Court documents directed the disconnection and removal of the home surveillance system. The evidence showed that a cable was disconnected, but the act was legal, justified and proper.

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**13-106**

1. Misconduct/Procedure - Deputy 5 assigned an inmate to the complainant's cell to create incidents.

Recommended Finding: Not Sustained

Rationale: The complainant said his new cellmate overheard Deputies saying that he was assigned to the complainant's cell to cause problems. All module Deputies assigned denied any conversation related to housing another inmate in the complainant's cell for the purposes of creating incidents, and the cellmate did not cooperate with the investigation. Classification records showed that the inmates were assigned to the cell in accordance with Department Policies and Procedures. Although the complainant documented his objection to

having a cellmate and had a prior history of incompatibility with cellmates, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct / Retaliation - Deputy 3 cited the complainant with rule violations in retaliation for grievances filed.

Recommended Finding: Action Justified

Rationale: The complainant attempted to give Deputy 3 a grievance form while the Deputy was conducting a security check. Video surveillance confirmed that the complainant contacted Deputy 3 as he conducted the hourly security check. There was no audio recording of the event, but as Deputy 3 completed the security check, the complainant became animated, flailed his arms, and appeared to yell at/toward the Deputy. Deputy 3 later presented the complainant with a Rule Violation Report for aggressive and boisterous activity, and interrupting jail operations. The complainant had an extensive history of violating inmate rules and filing grievances alleging retaliation; however, the evidence showed that the complainant was cited for rules violations in accordance with Department Policy and Procedures, and the act was lawful, justified and proper.

3. Misconduct / Discourtesy - Deputy 2 called the complainant a “child molester.”

Recommended Finding: Not Sustained

Rationale: The complainant stated that Deputy 2 called him a child molester when he was escorted to the Medical Department. Deputy 2 denied making such a statement. As there were no witnesses to corroborate or refute either parties’ conflicting statement, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct / Retaliation - Deputy 2 cited the complainant with rule violations in retaliation for grievances filed.

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 2 served him with a Rule Violation Report because he had filed grievances against the Department. Deputy 2 denied the Rule Violation Report was issued for retaliatory reasons. The Rule Violation Report indicated that the complainant directed comments to Deputy 2, threatened him with a lawsuit, and attempted to start an argument over grievances filed two weeks earlier. The complainant reportedly refused to follow Deputy 2’s direction to be quiet and follow instructions. Deputy 2 presented the complainant with a Rule Violation Report for failure to treat members of the staff in a civil fashion, failure to obey staff instructions, conduct himself in a quiet and orderly manner, and engaging in activity that impaired or interfered with jail operations. Video evidence showed that the complainant and Deputy conversed during the escort to/from Medical, but the content of the conversation was not available. The issuance of the Rule Violation Report was per Department Policies and Procedures. The complainant had an extensive history of violating inmate rules and filing grievances alleging retaliation; however, the evidence showed that the complainant was cited for rules violations in accordance with Department Policy and Procedures, and the act was lawful, justified and proper.

5. False Report - Deputy 1 served the complainant with a false Inmate Status Report.

Recommended Finding: Action Justified

Rationale: The complainant reported that Deputy 1 served him with an Inmate Status Report (ISR) which falsely indicated he caused tension in the module because of grievances filed. Deputy 1 stated his ISR was truthful and accurate, documenting incidents over a two week period which supported the complainant’s assignment to administrative segregation per Department Policies and Procedures. Documented incidents included rule violations, the complainant’s incompatibility with other inmates assigned to the cell he occupied, an inmate’s concern about the complainant’s grievance-writing, and his own concerns for his safety. The evidence showed that Deputy 1 did file the report, but the act was lawful, justified and proper.

6. Misconduct / Procedure - Deputy 4 failed to properly conduct disciplinary hearings.

Recommended Finding: Action Justified

**Rationale:** The complainant objected to Deputy 4 serving as a Disciplinary Hearing Officer, because Deputy 4 also was the subject officer in more than 20 grievances he filed. A review of grievances filed demonstrated that the complainant had filed a number of grievances against another Sergeant, but none were filed against Deputy 4. Deputy 4, as the assigned Floor Sergeant on the incident dates, was responsible for holding the Disciplinary Hearings. The complainant also filed a Disciplinary Hearing Appeal, which was considered and denied per Department Policies and Procedures. The evidence showed that the Disciplinary Hearings conducted by Deputy 4 were lawful, justified and proper.

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### **13-107**

1. Excessive Force – Deputies 1-6 used force on the complainant while he experienced a complex partial (epileptic) seizure.

**Recommended Finding:** Action Justified

**Rationale:** The complainant did not recall the incident because he experienced a complex partial seizure, but stated that other inmates told him deputies “beat him down.” Deputy 4 reported that complainant’s cellmate told him the complainant had been acting strange. Deputy 4 went to the complainant’s cell, noted blood on his shirt and the cell floor, and escorted the complainant out of the cell. Video evidence showed the complainant exited his cell and wandered aimlessly around the module for approximately five minutes, while Deputies 2, 4, and 5 followed at a safe distance, making minimal contact. The complainant was steered toward a stool, sat down, he then fell off the stool, and deputies assisted him back into a seated position. As deputies held the complainant’s shoulders to prevent him from falling, he suddenly attempted to stand, jerked his body, pushed away from deputies, and flailed his arms; at which time Deputy 3 used an arm control to hold the complainant’s upper body and apply downward pressure to take him to the ground. Deputy 1 reported he observed the complainant ball his fist and believed he was going to strike Deputy 3, at which time he struck the complainant twice with a closed fist. Deputy 6 assisted in controlling the complainant using body weight. Department Policies and Procedures authorize deputies to use necessary and objectively reasonable force in the defense of self or others. The evidence showed that deputies did use force to control the complainant, and the force was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1-6 failed to provide the complainant emergency medical attention.

**Recommended Finding:** Action Justified

**Rationale:** The complainant had no recollection of the incident, but believed deputies did not provide needed emergency medical attention. Video surveillance showed that Deputy 4 escorted the complainant out of his cell at approximately 8:58 pm, and contacted House Control to lockdown the module. The House Control Officer ordered inmates to lockdown, and called for medical personnel to report with a gurney to transport the complainant. As inmates proceeded to lockdown in their cells, deputies followed the complainant as he wandered aimlessly throughout the module until force was used to gain control at 9:02 pm. Once handcuffs and leg chains were applied, the complainant was placed on a gurney and transported for medical evaluation. The evidence showed that deputies recognized the situation required an emergency medical response per Department Policy and Procedure, and reacted with efficiency and speed, without compromising security.

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### **13-111**

1. Misconduct/Procedure – Deputy 3 kicked in the locked door of the complainant’s guest room.

**Recommended Finding:** Action Justified

**Rationale:** While conducting a Probation Compliance check on the complainant’s son, deputies located a locked, interior bedroom door which prevented them from completing a protective sweep of the residence. During a protective sweep, deputies are authorized to conduct a cursory inspection of the residence, including a non-probationer’s quarters, and all other rooms, to ensure that there are no other person(s) in the residence. Deputies requested a key to the door from the probationer, but he reported not having a key. When asked who

occupied the bedroom, and why it was locked, the probationer's response raised further suspicions about possible dangers inside the room. Deputies could not safely conduct the compliance check without clearing each room, so Deputy 3 was authorized to force the locked door open, and the room was checked and cleared without incident. The evidence showed the alleged act did occur, but was lawful, justified and proper.

2. Illegal Search or Seizure – Deputy 5 confiscated the complainant's son's cell phone and did not return it to him.

Recommended Finding: Not Sustained

Rationale: The complainant alleged that Deputy 5 confiscated her son's cellphone during a probation compliance check, and did not return it to him. All of the deputies on scene at the time of the compliance check, were questioned about the cellphone, and denied that they took the probationer's cellphone; and denied having knowledge of who may have confiscated the phone. The arresting deputy reported hearing detectives on scene discuss the cellphone, but did not recall which detectives it was, nor did he recall "with certainty" if the cellphone was handed to him by a detective to seize as evidence. The cellphone was not listed on the arrest report under seized property. The complainant's son reported that his cellphone was in his bedroom prior to the compliance check, but missing afterwards. He did not see any deputy handling his phone, as he was in the living room area at the time his bedroom was searched. The complainant was not present at the time of the search, but reported information stated to her by her son. The whereabouts of the probationer's cellphone remain unknown, and a specific deputy could not be identified as having taken the cellphone. There was insufficient evidence to prove or disprove the allegation.

3. Misconduct/Procedure – Deputies 2, 3 and 4 "ransacked" the complainant's son's bedroom.

Recommended Finding: Action Justified

Rationale: The complainant alleged that deputies "ransacked" her son's bedroom while conducting a 4<sup>th</sup> Waiver search in her home. Deputies 2, 3 and 4 reported conducting a thorough search of the probationer's bedroom according to the provision of his 4<sup>th</sup> Waiver status, but denied that they "ransacked" his room. Drug paraphernalia and a high-power rifle bullet were found during this search, necessitating an extensive search of the probationer's bedroom. Photos taken before and after the compliance check showed the bedroom in some level of disarray, but not to the extent of being ransacked. The alleged action did occur, but was lawful, justified and proper.

4. Misconduct/Procedure – Deputy 1 offered money to the complainant's son to help him "set up a drug buy."

Recommended Finding: Action Justified

Rationale: The complainant alleged that Deputy 1 offered money to her son to help him "set up a drug buy." Deputy 1 denied this allegation, stating that he asked the probationer if he was interested in becoming a confidential informant, and as such, he could be compensated for his assistance. Pursuant to Policy 6.62, Informant Guidelines, of the Sheriff's Department Policies and Procedures Manual, this offer was permissible, as the policy provides for the recruitment of individuals as confidential informants, to furnish information or perform a lawful service for the Department. A deputy present during the conversation between Deputy 1 and the probationer reported hearing Deputy 1 ask the probationer if he wanted to work as a confidential informant. He did not hear him request assistance setting up a drug buy. Other deputies on scene denied hearing Deputy 1 make this offer as well. The evidence showed the alleged act did occur, but was lawful, justified and proper.

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## **13-115**

1. Misconduct/Procedure – PO 1 and PO 2 failed to identify themselves and inform the complainant of their intention to search his home.

Recommended Finding: Action Justified

Rationale: PO 1 and PO 2 conducted a 4<sup>th</sup> Waiver Search on the probationer who resided in the complainant's home. The complainant alleged that when contacted, probation officers failed to identify themselves and inform him of their intention to search his home. PO 2 denied the complainant's allegations, stating that she followed



PC § 844 "knock and notice" requirements, when as contact officer, she conveyed to the complainant who they were, and the purpose of their visit. PO 1 corroborated that PO 2 gave knock and notice when they initiated contact with the complainant. Both the complainant and PO 2 reported that the complainant's dogs barked loudly at the door when contact was initiated, and this may have prevented the complainant from hearing probation's announcement. The evidence showed that the actions of the probation officers were lawful, justified and proper.

2. Misconduct/Discourtesy – PO 1 and PO 2 were “rude” and “far too aggressive” during their search of the complainant's home.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 and PO 2 were “rude” and “far too aggressive” while conducting a 4th Waiver Search of his home. Probation officers denied this allegation, stating that firm and direct language was necessary to gain compliance from the complainant, who was delayed in responding to their directive to return to his seat. During the Safety Sweep of the home, the complainant left his seat in the living room and ran toward PO 1 to retrieve his dog. PO 1 reported that he was unclear of the complainant's actions, and these actions had compromised officer safety. When directed to return to his seat, the complainant was uncooperative and slow to respond, stating that he had the right to observe the search, to ensure that his bedroom was not searched. He eventually complied after PO 1's second directive to return to his seat. Probation Officers reported using professional and direct language during their contact with the complainant. They further documented that the search of the complainant's home was conducted according to policy, and limited to the probationer's sleeping area and common areas of the home to which he had access. The actions of the probation officers appeared to be lawful, justified and proper.

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## **13-116**

1. False Arrest – Deputies conducted a sobriety test, said Complainant 1 (C1) allegedly ran a red light, and then arrested him for resisting.

Recommended Finding: Action Justified

Rationale: C1 said he did not run a red light, was not under the influence, and that charges against him were dismissed. Deputy 4 conducted a traffic stop believing C1 had committed a vehicle code violation, and smelled alcohol upon contact. Deputy 3 administered a Preliminary Alcohol Screening (PAS) test with negative results. During the detention, Deputies 1, 2, and 4 reported that C1 took a fighting stance and challenged them. They then placed hands-on C1 to subdue and arrest him for PC§ 69, Resisting Executive Officer. Deputy 4 wrote an amendment clearing the traffic infraction, and the District Attorney's office subsequently dismissed the misdemeanor charge. The evidence showed the alleged act or conduct did occur, but was lawful, justified and proper.

2. Illegal Search – Deputies searched Complainant 2's (C2) car without permission.

Recommended Finding: Not Sustained

Rationale: C2 did not identify the deputy who she said “started to search” her vehicle without cause and/or permission. Deputy 3 denied searching the car, while Deputies 1, 2, and 4 did not recall who, or if a search was conducted. C1, did not have identification and was in violation of VC§ 12951, Possession of License. The law allows for a limited search of a vehicle for license and registration, and furthermore, a warrantless search is permissible incident to an arrest, however, there was insufficient evidence to either prove or disprove that a vehicle search was conducted.

3. Misconduct/Procedure – A deputy repeatedly “yelled” at Complainant 2 (C2), told her to leave, and threatened her with arrest.

Recommended Finding: Not Sustained

Rationale: C2 said that an unidentified deputy yelled that C1 was very bad. When C2 questioned the deputy as to why he was yelling, she was told to leave the area or be arrested. None of the associated reports at the time of the incident documented this event. Deputies 1, 2, and 4 later reported that family members interfered with their investigation, and they told them to leave under threat of arrest. While interference in an official police investigation is grounds for an arrest; there was insufficient evidence to either prove or disprove the tone of the conversation by all parties.

4. Misconduct/Procedure – Deputy 4 arrested Complainant 1 (C1) who posted excessive bail, and then the charges were dropped.

Recommended Finding: Action Justified

Rationale: The Co-complainants objected to the amount of bail associated with the arrest charges. Deputies 1, 2, and 4 reported that C1 took a fighting stance and challenged them to a fight, which resulted in his arrest for violation of PC§ 69, Resisting Executive Officer. Based on California law, the arrest charge was appropriate because of C1's threat of violence toward the deputies, which resulted in a bail amount set by the San Diego Superior Court Felony Bail Schedule. The District Attorney's Office used their discretion and declined to prosecute C1, however the evidence showed that the arrest charge was lawful, justified and proper.

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### **13-118**

1. Excessive Force – Deputy 2 injured the complainant during handcuffing.

Recommended Finding: Action Justified

Rationale: The complainant stated that Deputy 2 tore his rotator cuff during handcuffing, and also alleged other injuries to his neck, back and both hands/fingers. While in the process of citing a driver for expired tags, Deputy 1 told Deputy 2, that the passenger was confrontational. A query of both subjects, revealed a long criminal history of violence for the complainant, and based upon his current demeanor, Deputy 2 handcuffed and detained him. Deputy 2 said the complainant told him he had an arm or shoulder injury, and no force was used. He merely brought both arms behind the complainant's back and applied each bracelet, and said that there was no complaint of injury at that time. Furthermore, Deputy 2 checked the handcuffs to ensure they were not too tight. Deputies 1 and 2 subsequently observed the complainants carrying bulky items from their vehicle, prior to towing. Deputy 2 complied with Sheriff's policy in detaining and handcuffing a suspect during an investigation, and medical records refuted the complainant's testimony. The evidence showed that the deputy's conduct was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 placed the disabled complainant into the back of a patrol vehicle for almost an hour, without proper ventilation.

Recommended Finding: Action Justified

Rationale: The complainant said that he has respiratory problems, and was placed in a car for approximately 45-60 minutes with the windows rolled up on a hot summer day (90°). Weather recordings for this incident date and time reported the temperature was approximately 75°. Deputy 2 confirmed it was hot, and said the air conditioner was on at the maximum level, with the windows up. He also reported that the complainant was detained at 4:38 pm and released from the car at about 5:10 pm, without complaint of weather conditions or respiratory issues. The evidence showed the conduct that occurred was lawful, justified and proper.

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### **14-003**

1. Illegal Seizure – Deputies 1 and 2 placed the complainant on a 5150 hold without questioning her.

Recommended Finding: Action Justified

Rationale: The complainant stated Deputies 1 and 2 failed to talk with her prior to transporting her to a hospital for evaluation under Welfare and Institutions § 5150, In-custody 72-hour treatment and evaluation for mentally

disordered person. Deputies 1 and 2, and a Psychiatric Emergency Response Team (PERT) Clinician, were dispatched to investigate a possible suicidal suspect. Deputy 2 and the PERT Clinician reported that they advised the complainant that they responded to a report that she intended to commit suicide by driving off a cliff. Deputy 2 and the PERT Clinician determined the complainant to be a danger to herself, documented the 72-Hour Detention in accordance with WI § 5150 and Department Policies and Procedures, and transported her to a local hospital for evaluation. Deputies 1 and 2 stated they attempted to question the complainant, but she would not cooperate; statements supported by the PERT Clinician. The evidence showed that the act did occur, but was lawful, justified and proper.

2. Excessive Force – Deputies 1 and 2 pulled the complainant from her vehicle resulting in injury.

Recommended Finding:

Rationale: The complainant stated that Deputies 1 and 2 forcefully removed her from her vehicle. Deputies 1 and 2, and an accompanying PERT Clinician, reported they approached the complainant's vehicle and advised her that they had been dispatched to the location, because of a report there was a depressed women threatening self-harm using her vehicle. The complainant reportedly told Deputies she did not need any help from Deputies and asked them to leave. After requests that the complainant exit the vehicle were ignored, Deputies 1 and 2 physically removed her and placed her in handcuffs. There were no reported injuries in deputy reports, and the hospital intake records indicated that the complainant denied any medical complaints. The evidence showed that the act did occur, but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 3 did not take a complaint when the complainant reported mistreatment by Deputies 1 and 2.

Recommended Finding: Unfounded

Rationale: The complainant said she reported to the Sheriff Station on the day following her arrest, and attempted to file a complaint with an unidentified deputy. A review of Sheriff's Department records failed to produce any evidence that the complainant made contact with Station personnel to file a complaint; she later filed a complaint with Sheriff's Department Internal Affairs and received a timely response. The evidence showed that the act did not occur.

4. Misconduct/Procedure – The Sheriff's Department, on multiple occasions, refused to provide a police report to the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated she requested, on approximately four separate occasions, the police report documenting her 72-Hour Detention. The complainant was unable to identify any Sheriff's Department personnel contacted; and, there were no records of the complainant's request for a copy of the police report. The complainant was unable to provide any documentation to demonstrate submittal or denial of her request. The evidence showed that the act did not occur.

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## **14-014**

1. Misconduct/Discourtesy – Deputy 1 was rude, unprofessional, and threatened the complainant with arrest.

Recommended Finding: Action Justified

Rationale: The complainant described Deputy 1's manner as "aggressive" and said he was "unprofessional" during their interaction at court. Deputy 1 did not use coarse, violent, profane or insolent language during this contact, but stated the complainant used profanity toward him. Sheriff's Policy mandates that employees be tactful and exercise patience, however tone and context are subjective and witness statements and video evidence could not clearly substantiate or refute the opposing parties statements. The complainant was not a direct party to the court proceedings; and after he reportedly used profanity and became disruptive, he was asked to leave the courtroom. Deputy 1 told the complainant that if he did not follow his directions, he would be arrested and taken to jail. Bailiffs are responsible for the security of court staff and the public; and to respond to

any issues that disrupt the court. The evidence showed Deputy 1's instructions to the complainant were lawful, justified and proper.

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## **14-028**

1. False Arrest – PO 1 arrested the complainant on a Flash Incarceration.

### **Recommended Finding: Action Justified**

**Rationale:** The complainant alleged that PO 1 falsely arrested him on a Flash Incarceration. A Flash Incarceration is a probation condition in which a probationer can be arrested and incarcerated for a period of up to 10 consecutive days, without a court hearing, for any violation of a post release supervision condition. The complainant was released on Post Release Community Supervision (PRCS) pursuant to PC§ 3450, Post Release Community Supervision Act of 2011, and was subject to community supervision with various release conditions for a period not exceeding three years. The complainant violated the terms of his conditions when evidence showed that he had traveled out of county without permission; was found with marijuana cigarettes in his vehicle, and initially refused to cooperate with the Fourth Amendment Waiver search by his probation officer. PO 1 arrested the complainant for violations of his PRCS conditions and sanctioned him with 10 days Flash Incarceration. The evidence showed that the alleged act did occur, but was lawful, justified and proper.

2. Misconduct/Procedure – PO 1 vandalized the complainant's vehicle during a Fourth Waiver Search.

### **Recommended Finding: Unfounded**

**Rationale:** The complainant alleged that PO 1 "vandalized" and "completely tore up" his vehicle while conducting a Fourth Waiver search. He reported having photos of the alleged damage to his vehicle that he would provide to the undersigned; but to date, these photos have never been provided. PO 1 denied that he damaged the complainant's vehicle during this search, stating that the complainant's vehicle was already disheveled at the time of the search. A department information source reported that, other than in the Probation Case Management System notes, Probation does not document uneventful searches. When damages occur, probation officers document them via Incident Reports and provide information on how the owners can submit a damage claim, and request compensation for any damages. Probation had no documentation of any damages, or complaints of damage related to the vehicle search. The complainant provided several false and misleading statements to PO 1 about this incident, and later to the undersigned, during the investigation of this complaint. Given the complainant's compromised credibility, it appears likely that the alleged act or conduct did not occur.

3. Misconduct/Discourtesy – PO 1 stated to the complainant, "Shut up, I go by my own rule book," or used words to that effect.

### **Recommended Finding: Not Sustained**

**Rationale:** The complainant alleged that during an office visit, PO 1 stated to him, "Shut up; I go by my own rule book," or used words to that effect, when asked why his vehicle was being searched. PO 1 denied making this statement, and absent an audio or video recording of this statement, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Discourtesy – PO 1 stated to the complainant, "You are nothing but a convict, and to speak when spoken to," or used words to that effect.

### **Recommended Finding: Not Sustained**

**Rationale:** The complainant alleged that PO 1 stated to him, "You are nothing but a convict, and to speak when spoken to," or used words to that effect, during contact at an office visit. PO 1 denied making this statement, and absent an audio or video recording of this statement, there was insufficient evidence to either prove or disprove the allegation.

5. Misconduct/Procedure – PO 1 refused to allow the complainant to travel out of county to see his doctor for treatment.

Recommended Finding: Action Justified

Rationale: The complainant alleged that PO 1 refused to allow him to travel out of county to see his doctor for treatment. PO 1 reported that the complainant called him while in transit out of the county to inform him that he was going to Orange County for a doctor's appointment. Pursuant to the conditions of his probation, the complainant was required to request permission to leave the county 10 days in advance, and this request had not been made. PO 1 reminded the complainant of this condition and directed him not to leave the county; to which the complainant stated an expletive to PO 1, and hung up the phone. The evidence showed that the alleged act or conduct did occur, but was lawful, justified and proper.

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**14-101**

1. Misconduct/Discourtesy – Deputy 1 twice called the complainant an idiot, and told him to “shut the fuck up!”

Recommended Finding: Not Sustained

Rationale: The complainant became upset when his personal wheelchair was confiscated and he was given an inferior model. He said when he protested the issue, Deputy 1 screamed at, and disrespected him in front of the entire module. The complainant grieved the matter and a sergeant investigated and responded. Witnesses offered by the complainant did not cooperate with this investigation. Deputies 1-3 documented the complainant's actions that violated Inmate Policies & Procedures. Deputy 1 admittedly reprimanded the complainant for “acting like an idiot,” but denied use of profanity, which Deputy 2 confirmed. However, the surveillance video did not have audio, and there was insufficient evidence to either prove or disprove the allegation.

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**14-103**

1. Misconduct/Procedure – Deputy 1 referred the complainant to the San Diego Police Department (SDPD) after she was repeatedly assaulted by her husband.

Recommended Finding: Summary Dismissal

Rationale: The complainant explained that Deputy 1 was not the subject of her complaint. She contacted him for assistance and he referred her to the governing authority. The complainant confirmed all of the incidents occurred within SDPD's jurisdiction, over whom CLERB has no authority.

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**14-112**

1. Misconduct/Procedure – Deputy 1 arrested the complainant for being drunk and disorderly; she subsequently discovered her wrist was broken.

Recommended Finding: Action Justified

Rationale: The complainant admittedly was in a “blackout state” and did not recall anything that occurred. An off-duty SDPD officer found the complainant in his yard, unable to care for herself. The complainant was verbally abusive and aggressive toward the officer, and attempted to enter his home uninvited. The officer reportedly applied a right hand wrist lock, and a bear hug hold; before he released her and she fell onto her buttocks. Sheriff deputies were called and responded to the report of a suspicious person. Deputy 1 reported that no force was used when he placed the complainant under arrest for PC 647(f), drunk in public, and he observed no injury at that time. Deputy 2 transported the complainant to the detention facility and also reported that the complainant was highly intoxicated, but no force was used and no injuries incurred. The complainant reported no injuries when booked into custody, and was observed and treated by Sheriff's medical staff until her release. Thereafter, x-rays confirmed a wrist fracture. Deputy 1's actions were lawful and proper in that he arrested the complainant because she was a danger to herself and/or others. Due to the complainant's inebriation, it is unknown as to when and how she sustained injury.

2. Misconduct/Medical – Medical staff treated the complainant’s compound fracture with an ice pack.

Recommended Finding: Summary Dismissal

Rationale: The complainant said she awoke in jail with a broken bone sticking out of her wrist, and a nurse brought an ice pack when she requested assistance. Sheriff’s medical records did not corroborate any documentation of a compound fracture. The complainant was somewhat uncooperative during the booking process, but she later sought treatment and medical protocol was followed. There was no evidence to support that the complainant sustained a broken bone while in the Sheriff’s custody and care. Medical staff and treatment reside outside CLERB’s jurisdiction.

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#### **14-116**

1. Misconduct/Procedure – Deputy 1 engaged in conduct unbecoming an officer.

Recommended Finding: Summary Dismissal

Rationale: The complainant said that Deputy 1 posted a negative *Yelp* review about her business and offered his services in an official capacity as a deputy sheriff to harm the business and force its closure. Deputy 1 denied involvement with the associated complaint during the course of his duties. Because the alleged conduct did not arise out of the performance of the Peace officer's official duties or the exercise of Peace officer authority, CLERB has no jurisdiction in this matter per CLERB Rules and Regulations Section 4.2. The complainant was referred to the Sheriff’s Internal Affairs division for investigation of her complaint

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#### **14-123**

1. Misconduct/Procedure – Deputy 1 told the complainant to leave a hospital, and that if she came back for anything other than a medical emergency, she would be arrested for trespassing.

Recommended Finding: Action Justified

Rationale: The complainant said that while at a worker’s compensation office, she was ordered to leave, violating her rights as a “Whistleblower.” Deputy 1 responded to a “disturbance call” and ordered the complainant to leave in order to preserve the peace. He advised the complainant to contact an attorney for advice on how to legally obtain her documents. The evidence showed the alleged act or conduct was lawful, justified and proper.

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*End of Report*